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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,964	12/14/2001	Heidi Riedel	Beiersdorf 755-KGB	7321

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EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 03/20/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/016,964	Applicant(s) RIEDEL ET AL.	
	Examiner Lauren Q Wells	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-15 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(i) Claim 1 is vague and indefinite, as it is confusing. Why is Roman numeral “IV.” preceded by Roman numeral “I.”?

(ii) Claims 2 and 3 are vague and indefinite, as they are confusing. Claim 2 is directed toward nonpolar lipids and claim 3 is directed toward polar lipids. How can they both be defined by a polarity of at most 30mN/m?

(iii) Claim 7 is vague and indefinite, as it is confusing. The multiple periods make it unclear where the claim ends. Furthermore, it is unclear whether A, B, or C can have a range from 2-20% or if the combination of A,B, and C can have a range from 2-20%.

(iv) The phrase “claim inclaim 4” in claim 5 (line 1) is vague and indefinite. What is meant by this? Is this a typo?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 11, 13-15 rejected under 35 U.S.C. 102(b) as being anticipated by Bellon et al. (FR 2789397).

Bellon et al. exemplify a facial foam comprising 22% PEG-100 stearate glyceryl stearate, 12% stearic acid, and 6% octyldodecanol, 5% glycerol, wherein nitrogen is added to the composition in 1-90% by volume. The claims recite a method of caring for skin comprising applying the composition to the skin. Thus, Bellone et al. and the instant invention both teach a foam comprising 12% of at least one emulsifier A (stearic acid), 22% of at least one emulsifier B (PEG-100 stearate glyceryl stearate), 6% of at least one coemulsifier C (octyldodecanol), moisturizer (glycerol), and 1-90% by volume nitrogen. See pgs. 11-12.

maintain
over 14-15

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellon et al. as applied to claims 1-4, 11, 13-15 above.

Bellon et al. is applied as discussed above. Exemplified is a composition comprising 2% polyethoxylated fatty acid esters. The reference lacks a ratio of A:B:C of 1:1:1.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach a ratio of A:B:C as 1:1:1 in the invention of Bellon et al. because it has been

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held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellon et al. as applied to claims 1-4, 11, 13-15 above, and further in view of Synder (4,708,813).

Bellon et al. is applied as discussed above. The reference lacks a hydrophilic emulsifier.

Synder teaches a nonlathering cleansing mousse with skin conditioning benefits. Sorbitan monostearate is taught as a surfactant that provides skin cleansing benefits and imparts a uniform dispersion of emollient and other ingredients in the composition. Surfactants are disclosed as comprising 1.5-15% of the composition. See abstract; Col. 4, line 26-Col. 5, line 24.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the sorbitan monostearate of Synder to the composition of Bellone et al. because of the expectation of achieving a composition with greater skin cleansing benefits and which imparts uniformity to the emulsion.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bellone et al. as applied to claims 1-4, 11, 13-15 above, and further in view of Saint-Leger et al. (5,939,077).

Bellone et al. is applied as discussed above. The reference lacks carbon dioxide.

Saint-Leger et al. teach cosmetic compositions. Carbon dioxide and nitrogen are taught as interchangeable gases that are used in producing cosmetic foams. See Col. 4, lines 7-15.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the nitrogen of Bellone et al. for carbon dioxide because Saint-Leger et al. teach carbon dioxide and nitrogen as equivalent gases for use in producing cosmetic foams.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-5:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw
March 7, 2003


SREENI PADMANABHAN
PRIMARY EXAMINER 3/9/03